

Mars, who had similar experience for twenty-five years, testified the pinkish appearance would not evidence decomposition unless the color was greenish and accompanied by odor.

The head of the inspection company above referred to testified: "I have seen lots of reddening salmon along the backbone and paid no attention to it whatever, unless it threw off an odor of decomposition."

The testimony of the Chief Inspector, already referred to, was that so far as honeycombing was concerned, the samples from the fish here seized were actually tasted where there was any pitting. In that regard his evidence was:

Question. Do you know what honeycombing is?

Answer. Yes.

Question. Did you find any of that condition on these fish?

Answer. No. Any of these pits we found in the fish we took particular pains to taste that particular fish, to see whether or not it burned the mouth, and I got no burn out of any of them.

Question. What did you find with reference to the odor of these fish?

Answer. I thought the odor was perfectly normal.

Question. Did you examine them for color?

Answer. I noted the color, yes.

Question. What conclusion did you come to with reference to the color of those fish as having any bearing on their quality?

Answer. The color I considered was absolutely all right as far as the quality was concerned.

As we have said, the burden of proving its case by more than a mere preponderance of testimony rested on the Government and this burden, in our opinion, it did not meet; and this not only from a consideration of what was shown by the Government's proof, but also by what it might have shown but which it did not. We refer to the failure to open up boxes of these sardines and submit them to the inspection of the jury. The whole situation could have been solved had the cans been submitted to the jury, who could have, by the sense of smell and taste, determined whether the sardines were fit for food, and which course would not have left the jury in such a bewildered state of mind as to constrain them to recommend the mercy of the court. The rendering of such a verdict in itself would almost evidence their distrust of their own findings. Holding, as we do, that the trial Judge erred in making the preponderance of proof all that was required, and holding further that on the whole testimony the Government had not met the burden resting upon it, the judgment below is reversed and the case remanded with instructions to dismiss the libel.

On May 29, 1936, the libel was dismissed by the district court, as so directed.

W. R. GREGG, *Acting Secretary of Agriculture.*

25532. Adulteration and misbranding of Honey Grove brand tomato catsup, Mid-West brand tomato catsup, Thames brand prepared mustard, Mid-West brand prepared mustard, SSS brand prepared mustard, Blue Mountain prepared mustard, Trump brand prepared mustard; and misbranding of Fargo prepared mustard. U. S. v. Mid-West Food Packers, Inc., and Robert J. Megular. Fine, \$100 imposed upon the corporation, and costs awarded against it. Individual defendant fined \$100. (F. & D. no. 31326. I. S. nos. 5879-A, 7294-A, 7585-A, 7807-A, 8369-A, 18179-A, 18205-A, 21539-A, 21607-A, 28925-A, 33172-A, 33173-A, 34352-A, 34361-A, 34501-A, 34508-A, 34509-A, 34563-A, 34564-A.)

On April 23, 1934, the United States attorney for the Northern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Mid-West Food Packers, Inc., a corporation, and Robert J. Megular, alleging shipments by them in violation of the Food and Drugs Act as amended, in the period from March 12, 1932, to January 21, 1933, from Fowlerton, Ind., to various places in other States of quantities of Honey Grove brand tomato catsup, Mid-West brand tomato catsup, Thames brand prepared mustard, Mid-West brand prepared mustard, SSS brand prepared mustard, Blue Mountain prepared mustard, Trump brand prepared mustard, and Fargo prepared mustard, all of which, excepting the Fargo prepared mustard, which was misbranded only, were both adulterated and misbranded. The articles were labeled in part: (Bottle) "Honey Grove Brand Tomato Catsup * * * The Cincinnati Wholesale Grocery Co. Distributors Cincinnati and Dayton, Ohio"; (bottle) "Mid-West Brand Tomato Catsup * * * Made by Midwest Food Packers, Inc. Marion, Ind."; (jar) "Mid-West Brand Prepared Mustard * * * Distributed by Mid-West Food Packers, Inc. Fowlerton, Indiana"; (jar) "Thames Brand Prepared Mustard * * * Distributed by Thames Coffee Company Syracuse, N. Y."; (jar)

"S S S Brand Prepared Mustard * * * Distributed by Self Service Stores Chanute, Kansas"; (jar) "Blue Mountain Prepared Mustard * * * Capital Wholesale Grocery Co. Distributors Providence, R. I."; (jar) "Trump Brand Prepared Mustard * * * Packed for Eastern Whol. Gro. Co. Providence, R. I."; (invoice) "Fargo Prepared Mustard 40 cs. 80 doz. 8 oz."

Adulteration of the Honey Grove brand tomato catsup and the Mid-West brand tomato catsup (each of the three sizes of bottles of the latter, labeled "12 oz. Avd", "14 Oz. Avd.", and "6 Lb. 8 Oz. Avd.", respectively, being treated in the case as a separate article), was charged under the allegation that gum had been substituted in part for tomato catsup.

Adulteration of the Mid-West brand tomato catsup (contained in the two sizes of bottles thereof labeled "12 Oz. Avd." and "6 Lb. 8 Oz. Avd.", respectively, each size being treated in the case as a separate article) was further charged, under the allegation, directed to the contents of the smaller bottles, that the article consisted in part of a filthy and decomposed vegetable substance, and under the allegation, directed to the contents of the larger bottles, that the article consisted in part of a decomposed vegetable substance.

Adulteration of the Thames prepared mustard, the Mid-West brand prepared mustard (the latter as labeled in part, "Contents 2 Lbs."), the SSS brand prepared mustard, the Blue Mountain prepared mustard (the two sizes of jars of the latter, labeled in part, "Contents 1 lb" and "Contents 5½ oz." respectively), and the Trump brand prepared mustard, was charged, severally, under the allegation that mustard bran had been substituted in part for prepared mustard.

Misbranding of the Honey Grove brand tomato catsup and the Mid-West brand tomato catsup (the latter as labeled in part, "14 oz. Avd") was charged, severally, (a) under the allegations that there were borne and labeled on the bottles statements, to wit, "Tomato Catsup * * * Absolutely Pure", and that the statements were false and misleading in that the articles were not tomato catsup and that they were products consisting, in part, of an undeclared added substance, to wit, gum; and (b) under the allegation that the aforesaid statements were borne and labeled on the bottles so as to deceive and mislead the purchaser thereof.

Misbranding of the Mid-West brand tomato catsup, labeled in part, "12 Oz. Avd" was charged (a) under the allegations that there were borne and labeled on the bottles the statements, to wit, "Tomato Catsup * * * We guarantee This Catsup To Be Absolutely Pure", and that the said statements were false and misleading in that the article was not tomato catsup and that it was a product consisting in part of an undeclared added substance, to wit, gum, and also in part of a filthy and decomposed vegetable substance; (b) and under the allegation that the aforesaid statements were borne and labeled on the bottles so as to deceive and mislead the purchaser of the article.

Misbranding of the Mid-West brand tomato catsup (labeled "6 Lb. 8 Oz. Avd") was charged under the allegation that there was borne and labeled on the bottles the statement, to wit, "Tomato Catsup", and that the said statement was false and misleading in that the article was not tomato catsup and that it was a product consisting in part of an undeclared added substance, to wit, gum; (b) under the allegation that the aforesaid statement was borne and labeled on the bottles so as to deceive and mislead the purchaser of the article.

Misbranding of the Mid-West brand prepared mustard (the four sizes of the jars thereof labeled, in part, "Net Weight 2 Lbs.", "Contents 2 Lbs.", "Net Contents 6 Lb. 8 Oz. Avd" and "Contents 8 oz." respectively), was charged, with respect to each of the four sizes of jars, (a) under the allegations that there was borne and labeled on the jars a statement of the weight of the contents of each, and that the statement was false and misleading in that the contents of each of the jars was of less weight than represented in the statement; (b) under the allegation that the statement aforesaid was borne and labeled on the jars so as to deceive and mislead the purchaser of the article; (c) under the allegation that the quantity of the contents of each jar was not plainly and conspicuously marked thereon, in that said quantity was less than represented in the aforesaid statement and was not stated on the jar.

Misbranding of the Mid-West brand prepared mustard (the two sizes labeled in part, "Contents 2 Lbs. * * * Made By Mid-West Food Packers, Inc. Fowlerton, Ind." and "Contents 2 Lbs. * * * Made By Mid-West Food Packers, Inc. Marion, Ind.", respectively) was additionally charged, severally,

i. e., with respect to each of the two sizes of jar, (a) under the allegation that there was borne and labeled on the jars the statement, to wit, "Prepared Mustard", and that the statement was false and misleading, in that the article was not prepared mustard; (b) under the allegation that the aforesaid statement was borne and labeled on the jars so as to deceive and mislead the purchaser of the article; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, prepared mustard.

Misbranding of the Thames brand prepared mustard was charged (a) under the allegation that there were borne and labeled on the jars the statements, to wit, "Prepared Mustard * * * Contents 2 lbs.", and that the said statements were false and misleading in that the article was not prepared mustard and that each of the jars contained less than 2 pounds of the article; (b) under the allegation that the said statements were borne and labeled on the jars so as to deceive and mislead the purchaser of the article; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, prepared mustard; (d) and under the allegation that the quantity of the contents of each jar was not plainly and conspicuously marked thereon, in that each jar contained a quantity of less than 2 pounds and such quantity was not stated on the jar.

Misbranding of the SSS brand prepared mustard was charged (a) under the allegations that there were borne and labeled on each of the jars the statements, to wit, "Prepared Mustard" and "Contents 2 lbs.", and that the said statements were false and misleading, in that the article was not prepared mustard, and in that each of the jars contained less than 2 pounds of the article; (b) under the allegation that the aforesaid statements were borne and labeled on the jars so as to deceive and mislead the purchaser; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, prepared mustard; (d) and under the allegation that the quantity of the contents of each jar was not plainly and conspicuously marked thereon, in that each jar contained a quantity of less than 2 pounds and such quantity was not stated on the jar.

Misbranding of the Blue Mountain prepared mustard (the two sizes of jars thereof labeled in part, "Contents 1 lb." and "Contents 5½ oz.") was charged, severally, i. e., with respect to each of the two sizes of jars, (a) under the allegation that there was borne and labeled on the jars the statement, to wit, "Prepared Mustard", and that the said statement was false and misleading in that the article was not prepared mustard; (b) under the allegation that the aforesaid statement was borne and labeled on the jars so as to deceive and mislead the purchaser of the article; (c) under the allegation that the article was offered for sale under the distinctive name of another article, namely, prepared mustard.

Misbranding of the Blue Mountain prepared mustard (the size of jars labeled in part "Contents 1 lb.") was further charged (a) under the allegation that there was borne and labeled on the jars the statement, to wit, "Contents 1 lb.", and that the said statement was false and misleading, in that each of the jars contained less than 1 pound of the article; (b) under the allegation that the aforesaid statement was borne and labeled on the jars so as to deceive and mislead the purchaser of the article; (c) under the allegation that the quantity of the contents of each jar was not plainly and conspicuously marked thereon, in that each jar contained a quantity less than 1 pound and such quantity was not declared on the jar.

Misbranding of the Trump brand prepared mustard was charged (a) under the allegations that there was borne and labeled on the jars the statement to wit, "Prepared Mustard", and that the said statement was false and misleading in that the article was not prepared mustard; (b) under the allegation that the aforesaid statement was borne and labeled on the jars so as to deceive and mislead the purchaser; (d) under the allegation that the article was offered for sale under the distinctive name of another article, namely, prepared mustard.

Misbranding of the Fargo prepared mustard was charged (a) under the allegation that the quantity of the contents of each jar was not plainly and conspicuously marked thereon and that the jars were unlabeled.

On January 13, 1936, a plea of guilty having been entered, the company was fined \$100 and costs, and the individual defendant was fined \$100.

W. R. GREGG, *Acting Secretary of Agriculture.*